

# Kerala High Court

**Rajeev Viswan , Public ...**

**VS**

**State Information Commissioner on 9 June, 2011**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**WP(C).No. 15464 of 2011(G)**

**1. RAJEEV VISWAN , PUBLIC INFORMATION**

**... Petitioner**

**Vs**

**1. STATE INFORMATION COMMISSIONER,**

**... Respondent**

**2. MRS. K.R.SHYNY**

**For Petitioner :SRI.SOORANAD S.SREEKUMAR**

**For Respondent :SRI.M.AJAY, SC, STATE INFORMATION COMMN**

**The Hon'ble MR. Justice P.N.RAVINDRAN**

**Dated :09/06/2011**

**O R D E R**

**P.N.RAVINDRAN, J.**

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**W.P.(C) No. 15464 OF 2011**

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**Dated this the 9th day of June, 2011**

## **J U D G M E N T**

The petitioner, who is the Secretary in charge and in that capacity the Public Information Officer of the Iverkala Service Co- operative Bank Ltd. 2006, has filed this writ petition challenging Ext.P6 order passed by the State Information Commissioner on an appeal filed by the second respondent whereby the petitioner was directed to furnish the information sought by the second respondent within 10 days from the date of receipt of a copy of Ext.P6. The brief facts of the case are as follows:

2. The second respondent was a former employee of the Iverkala Service Co-operative Bank Ltd. 2006 (hereinafter referred to as 'the bank' for short). She was placed under suspension and later dismissed from service. By Ext.P1 application dated 9.2.2009, the second respondent sought information from the Public Information Officer of the bank about the various decisions taken by the managing committee of the bank which relate to her. She also requested for copies of such decisions. The petitioner, in his capacity as the Public Information Officer of the bank, sent Ext.P2 letter dated 3.3.2009 in reply stating that the information sought relates to an arbitration case, ARC No.24/2008 pending before the Co-operative Arbitration Court, Thiruvananthapuram and therefore for that reason and in view of sections 8(1)(h) and 8(1)(j) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act' for short) the information sought cannot be given. Aggrieved thereby, the second respondent filed an appeal. The appellate authority rejected the appeal affirming the view taken by the petitioner. Aggrieved thereby, the second respondent filed a second appeal under section 19(3) of the Act before the State Information Commission. Upon receipt of notice of the appeal, the petitioner filed Ext.P4 objections wherein also reliance was placed on sections 8(1)(h) and section 8(1)(j) of the Act to defend his decision. By Ext.P6 order which is impugned in this writ petition, the State Information Commissioner over ruled the objections and directed the petitioner to furnish the information. Hence this writ petition.

3. I heard Sri.S.Sreekumar (Sooranad), learned counsel appearing for the petitioner and Sri.M.Ajay, learned standing counsel appearing for the State Information Commission. I have also gone through the pleadings and the materials on record. The fact that the second respondent was a former employee of the bank, that she was placed under suspension and later dismissed from service and that the said dispute is the subject matter of ARC 24/2008 presently pending before the Co-operative Arbitration Court are not in dispute. The information sought by the second respondent was in relation to the decisions taken by the managing committee of the bank relating to the second respondent. She had also asked for copies thereof. That information was declined on the ground that the issue regarding her dismissal from

service is pending before the Co-operative Arbitration Court and also relying on sections 8(1)(h) and 8(1)(j) of the Act. The learned counsel for the petitioner contended that the petitioner is being prosecuted in C.C. No.166 of 2007 on the file of the Court of Judicial Magistrate of First Class, Sasthamcotta on a complaint filed by the second respondent for offences punishable under sections 354 and 509 IPC and therefore, the information sought cannot be furnished in view of section 8(1)(h) of the Act. Section 8(1)(h) of the Act stipulates that notwithstanding anything contained in the Act there shall be no obligation to give any information which would impede the process of investigation or apprehension or prosecution of offenders. As noticed earlier, the petitioner is being prosecuted for the offences punishable under section 354 and 509 IPC. Under section 8(1)(h) of the Act, information which would impede the process of investigation or apprehension or prosecution of offenders alone can be declined. The information sought by the second respondent has nothing to do with the process of investigation of the crime which led to the registration of C.C. No.166 of 2007 or the apprehension or prosecution of the offender therein. The information sought by the second respondent relates to the decisions taken by the bank with reference to her while she was in service of the bank. Section 8(1) (h) of the Act does not therefore have any application. Likewise, section 8(1)(j) of the Act also has no application to the case on hand. The information sought by the second respondent relates to the decisions taken by the bank with reference to the second respondent while she was in service. Section 8(1)(j) can have application only when the applicant seeks information regarding some other person. Therefore section 8(1)(j) of the Act also does not apply. Further the petitioner or the bank had no case before the State Information Commissioner that the bank is not a public authority as defined in the Act. Likewise, Ext.P5 order passed by the Central Information Commission also does not have any application. In that order the Central Information Commission was considering the question whether a public authority can hold confidentially its side of the information and the internal deliberations it may have had in order to put forward its case before a court. It was held that the Act does not oblige a public authority to disclose confidential information relating to the manner in which it will defend the litigation in which it is involved. In other words all that the Central Information Commission held was that the defence which a public authority may have to a litigation need not be disclosed under the Act. In any case on the facts stated the information sought in the instant case does not fall under section 11(1) of the Act.

I accordingly hold that there is no merit in the writ petition. The writ petition fails and is dismissed.

P.N.RAVINDRAN,

(JUDGE)

vps